

Bell Atlantic Network Services, Inc.  
1133 Twentieth Street, N.W.  
Suite 810  
Washington, DC 20036  
202 392-1189  
FAX 202 392-1687  
E-mail: donald.brittingham@bell-atl.com

**Donald C. Brittingham**  
Director - Wireless Policy

COVER LETTER ORIGINAL

EX PARTE OR LATE FILED

RECEIVED

NOV 4 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Ex Parte

November 4, 1996

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

**Re: WT Docket 96-162 -- "Competitive Safeguards for LEC Provision of CMRS"**

Today, Cal Carrington and Phil Hahn, both of NYNEX, and the undersigned met with David Furth, Jane Halprin, and Mika Savir of the Wireless Telecommunications Bureau's Commercial Services Division to discuss the Commission's proceeding on LEC-CMRS safeguards. A summary of the issues discussed is attached.

Bell Atlantic and NYNEX believe that the Commission must repeal its cellular structural separations requirement (Section 22.903) immediately. Such a requirement cannot stand in consideration of the 1996 Act and the 6th Circuit Court's remand. Moreover, existing non-structural safeguards are adequate to prevent discriminatory interconnection practices and cross-subsidization of cellular service.

You may direct any questions regarding this matter to me on (202) 392-1189.



Attachment

cc: D. Furth  
J. Halprin  
M. Savir

No. of Copies rec'd  
List ABCDE

022

**Amendment of the Commission's Rules to Establish  
Competitive Service Safeguards for Local Exchange Carrier Provision of  
Commercial Mobile Radio Services**

**Notice of Proposed Rulemaking  
WT Docket No. 96-162**

**Joint Ex Parte of Bell Atlantic & NYNEX  
November 4, 1996**

- 1. The Telecommunications Act of 1996 establishes a new paradigm for regulating the telecommunications industry based on two principles:**
  - Regulations should be imposed only when absolutely necessary, and by the "least intrusive" means necessary to accomplish the objective.
  - Regulation must be applied symmetrically. In the context of LEC provision of CMRS, this means that the same regulations should apply to all LECs (not just the BOCs) and all broadband CMRS (not just cellular).
- 2. The Commission must repeal its structural separations requirement (Section 22.903) immediately, since it is in violation of the Act.**
  - Structural separations is not the least intrusive means for preventing discriminatory interconnection practices or cross-subsidization of cellular service.
  - Past Commission actions have favored non-structural safeguards over structural separations (e.g., Computer III, PCS, SMR, payphones).
  - The current structural separations rule applies regulation asymmetrically, and favors non-BOC competitors and PCS carriers.
  - There is no evidence to show that non-structural safeguards are inadequate, or that structural separations is necessary. Rules cannot be based on unsupported speculation.
  - The 6th Circuit Court's decision supports repeal of Section 22.903.
- 3. The record fails to establish the requisite clear need for a separate affiliate rule or any additional new safeguards.**
  - The Commission's objectives are already achieved by existing rules and policies, and no additional "compliance plan" safeguards are needed.
  - If a separate affiliate requirement (non-structural) is imposed, it should sunset upon the earlier of compliance with the checklist or three years.
  - Safeguards should apply uniformly to all Tier 1 LECs (not just the BOCs) and for all broadband CMRS (not just cellular).

**4. The cellular CPNI rule (Section 22.903(f)) must be repealed.**

- Requiring compliance with Section 22.903(f) would result in unauthorized disclosure of CPNI, thereby undermining customers' exercise of the rights granted by Congress.
- Section 22.903(f) is also inconsistent with Congress' intent for regulating CPNI in conjunction with Section 601(d)'s authorization of joint marketing and resale.
- New CPNI rules, applicable to all carriers, will be established pursuant to Section 222(c) under the Commission's CPNI proceeding.

**5. The record shows that no joint marketing and resale rules are needed.**

- Section 601(d) of the 1996 Act explicitly permits the joint marketing and resale of CMRS with other telecommunications services. The provision is self-executing, and no rules can or should be adopted.
- The relief granted under 601(d) was intended to enable the BOCs to offer one-stop shopping as their competitors have long been able to do.
- The Commission should not impose special regulations on BOCs or LECs that would continue to distort the market by advantaging other competitors.
- Existing safeguards alone ensure that there are identifiable transactions between a LEC and its CMRS affiliate or within a LEC's own business, that costs are appropriately allocated, and that the Commission can monitor those transactions.
- Public disclosure of agreements discourages price competition and risks collusion, price signaling and other anticompetitive conduct.